

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3733 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UMESH MANIBHAI PATEL

Versus

DISTRICT MAGISTRATE

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Appearance:

MR NM KAPADIA for Petitioner

MR KC SHAH, LD. AGP. for Respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the son of detenu- Manibhai Dwarkadas Patel has brought under challenge the detention order dated 6/3/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds of detention inter-alia state that the detenu illegally encroached upon the Government land bearing survey no. 351/2 of village Khokhra Mehmedabad, Taluka City of Ahmedabad District and by getting constructed a school building-unauthorised structure thereon, has been taking illegal monetary benefit out of the same. The area of survey no. 351/2 is 4856 sq. mtrs. out of which 1332 sq. mtrs. of land is in the possession of the Gujarat Housing Board and remaining 3524 sq. mtrs. of land is Government waste land, which is not given to any person or institution in any manner. The petitioner has got constructed a school building for obtaining unauthorised monetary benefits. One Mr. Patel Ishwarbhai Hirabhai on one side and Mr. Manibhai Dwarkadas Patel (the detenu) Ishwarbhai Hirabhai Patel, Manibhai Manorbhai Patel and Dashrathbhai Somdas Patel on the other side had entered into a trust document on a stamp paper of Rs.10/- on 30/8/1983 and formed a trust, namely 'Shree Rang Education Trust' and illegally entered upon the aforesaid Government land and got constructed a school building. The detenu is the trustee of the Shree Rang Education Trust and it is alleged that he is actively participating in the working of the said trust. He has been illegally and unauthorisedly deriving financial benefits from the trust in the form of rent from 1981 to 1994 in all amounting to Rs. 9,17,228/-. He has accordingly indulged in illegal activities as a "land grabber" according to sec. 2(h) of the PASA Act.

3. On the aforesaid brief facts the learned District Magistrate, Ahmedabad passed the impugned order of detention with a view to prevent the unlawful and anti-social activities resulting in public peace and tranquility.

4. In this petition challenging the aforesaid impugned order of detention number of grounds have been raised. However, it would not be necessary to deal with all those grounds of challenge to the impugned order of detention in view of subsequent events and later development in the matter, which may be noticed from the following order passed by this Court on 9/8/1996 :-

"In this detention matter concerning the alleged land grabbing following order was passed on 31/7/1996 (Coram : K.R. Vyas, J.) :-

'Considering the facts and circumstances of this case, the grounds of detention, and admittedly when the amount of grant has been received by the

petitioner, this Court is not inclined to hear and decide the matter unless the amount of grant is repaid by the petitioner. It is, therefore, ordered that on depositing Rs.2,51,000/- (Rupees two lacs fifty one thousand only) by the petitioner in this Court, being the proportionate share of the grant paid by the State Government, the petition shall be heard by this Court.

As and when the amount is deposited, it will be open for the petitioner to urge before this Court to take up the matter for hearing. On the said amount being deposited with this Court, the same shall be paid to the concerned department of the State Government.'

2. Mr. U.R. Bhatt, Ld. AGP appearing for the State submits that so far the amount has not been paid over to the Government. He, therefore, requests for issuing appropriate direction to the Registry in this respect for issuance of 'an account payee cheque' in the name of "District Education Officer, Ahmedabad city". Mr. Kapadia has no objection for passing such an order.

3. There is a further grievance made on behalf of the Government that Civil Suit No. 4527/1995 is pending before the Ahmedabad City Civil Court and that suit is required to be withdrawn. Mr. Kapadia submits that here also the petitioner has no objection if that suit is directed to be withdrawn by the petitioner. He, as a matter of fact, submits that the petitioner would withdraw the said suit within a period of two weeks from today.

4. Finally the petitioner has given a purshis to the effect that there is no objection from the side of the petitioner as also the detenu if the possession of the property bearing survey no. 351/2 alongwith all the superstructures standing thereon is taken over by the Government.

5. In above view of the matter, as it stands today, following further directions are issued :-

i) The Registry of this Court shall verify the amount deposited in the Court and shall issue an account payee cheque in the name of "District Education officer,

Ahmedabad city".

ii) The statement and the purshis referred to hereinabove with regard to no objection for withdrawal of the suit and with regard to possession of the land in question being taken over by the Government are hereby recorded.

iii) The purshis dated 8/8/1996 given by the petitioner is taken on record."

5. The question that arises from the aforesaid development in the matter is whether continued detention of the petitioner-detenu would be necessary and whether it can be said to be legal and valid. It may be noticed from the impugned order of detention and the grounds on which the said order has been passed that with a view to prevent the anti-social activity of gaining financial advantage out of the illegal trespass committed by the detenu and the others in the aforesaid Government land bearing survey no. 351/2 that the petitioner was required to be declared as 'land grabber' and was required to be detained for preventing him to derive financial benefits illegally and unauthorisedly as stated above. As a matter of fact, the grounds in specific terms set-out the unlawful advantage derived by the detenu and others from the aforesaid land. The total sum is stated to be Rs. 9,17,228/- in the form of grant for the building rent obtained from the Government. Hence, as can be noticed from the aforesaid order the petitioner was required to pay up the proportionate amount of Rs.2,51,000/- and for that purpose to deposit the said amount in this Court. It is not in dispute that the said amount is deposited in the Court and now it has been permitted to be withdrawn in a particular manner as desired by the Government. Besides, the detenu is a party to Civil Suit No. 4527/1995 pending before the Ahmedabad City Civil Court and that suit has been filed challenging notice issued by the Mamlatdar u/S. 61 of the Bombay Land Revenue Code in respect of the aforesaid land. It is not in dispute that there is no interim relief which is in operation in favour of the plaintiffs' including the detenu being one of the trustees interested as the plaintiff in the said suit. As can be noticed from the above quoted order a purshis has been filed and a statement has been made to the effect that the said suit shall be withdrawn. It is also made clear on behalf of the detenu in the purshis filed before this Court that there is no objection from the side of the detenu as also the petitioner if the possession of the property

described hereinabove, namely land bearing survey no. 351/2 alongwith all super structures standing thereon is taken over by the Government.

6. In my opinion the aforesaid development into the matter and the aforesaid conscious acts on the part of the detenu would clearly indicate that the purpose for which the detention order has been passed has been accomplished and the detenu is no longer and no further required to be continued in detention. In support of his submission Mr. Kapadia, learned advocate for the detenu has submitted that under such peculiar facts of the case continued detention should be snapped. Mr. Kapadia learned advocate appearing for the detenu has placed reliance upon a few decisions of this Court as also the other High Courts.

7. In *Niren Sarma vs. State of Assam* reported in 83 Criminal Law Journal 456 the petitioners were detained in pursuance of the orders passed by the detaining authority on the ground that the detenus had inter-alia participated in secret discussion held on 29/11/1981 on eve of "Rasta Roka" programme scheduled on 30/11/1981 and that they took part in a secret meeting held on 10/12/1981 to discuss about the observance of civil disobedience movement to be held on 14th and 15th December, 1981 and that the last activity attributed to them was what had taken place on 27/12/1981 when there were discussions about observance of 36 hours road blockade programme from 5 A.M. of 31/12/1981 and 36 hours civil disobedience movement on 10th and 11th January, 1982 and imposition of 'curfew' on 26/1/1982. It was inter-alia submitted that as the activities to prevent which the petitioners there were detained ceased to exist by the time the returns were filed, the grounds no longer existed to keep the petitioners in continued detention. In support of such a submission a reference is made to number of decisions inter-alia the decision in *Naranjan Singh v. State of Punjab* AIR 1952 SC 106, *Ram Narayan Singh v. State of Delhi* AIR 1953 SC 277, re *Madhu Limaye* AIR 1969 SC 1014 and *B. Ramachandra Rao v. State of Orissa* AIR 1971 SC 2197. These decisions were referred to for saying that the material date for this purpose would be the date of return. Reference was also made for this purpose to the decisions in the case of *A.K. Gopalan v. Govt. of India* AIR 1966 SC 816 and *Kanu Sanyal v. Dist. Magist[r]ate, Darjeeling* AIR 1974 SC 510. Strong reliance was placed on a Bench decision of the Gauhati High Court in the case of *Samir Das v. The District Magistrate, Kamrup*, 1975 Criminal Law Journal 315, where the order of detention was to prevent

the petitioner from acting in any manner prejudicial to the maintenance of services essential to the community. But that was grounded on some speeches by the petitioner relating to indefinite strike with effect from 8/5/1974. Since by the time the return had been filed that period was over, the Court held that the ground had become non-existent and being of that view the order was set aside. The Gauhati High Court held that the immediate object of the District Magistrate being that of preventing the petitioner from taking part in the activities of 'Rasta Roka' or 'civil disobedience' or 'curfew' as mentioned in the grounds of detention, the said object was fulfilled and that, therefore, further detention of the petitioners would not be in the spirit in which the detention order must have been passed. It has been observed as under :-

'As alluded, recourse to preventive detention has to be confined to "as few situations as possible" as has been emphasised by the Constitution Bench which had dealt with the constitutionality of certain provisions of the National Security Act.'

8. In Dadusinh Babusinh Solanki v. District Magistrate, Sabarkantha at Himatnagar and others in Special Criminal Application No. 1145 of 1988 decided on 20/2/1989 a Division Bench of this Court (Coram : A.P. Ravani and B.S. Kapadia, JJ, as they were then) were dealing with a detention order u/S. 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The facts there would indicate that the petitioner there was serving as a Clerk with Sathamba Group Multi-purpose Service Co-operative Society. On inspection of the business premises of the society by the Supply Inspector on 18/8/1988 several irregularities were found in the business of kerosene. On the basis of such irregularities, the proposing authority made a proposal for detaining the petitioner and after going through the relevant papers the detaining authority came to the conclusion that it was necessary to detain the petitioner for the purpose mentioned in the order of detention. It was not disputed before the Division Bench that the petitioner was a petty clerk drawing about Rs.600/- p.m. and that he was himself not a dealer and the dealer was the society. The society carried out the business in unlawful manner and the petitioner became active instrument in carrying on that business. Had there not been this type of business with the society, the petitioner being an employee of the society would never have occasion to deal with this activity and, therefore,

there would not have been any occasion whatsoever for the petitioner to indulge in the said activities. The Bench, therefore, questioned the learned counsel for the respondents as to what actions had been taken by the Department against the society which was a dealer. . It was stated at the bar that after the detention order was passed the Collector of Sabarkantha had ordered to cancel the licence of the society for distribution of kerosene. On account of such a subsequent event the Bench observed :-

'Thus, it is clear that the petitioner who is an employee of the society would not be in a position to indulge in the same or similar type of activities because the licence of the society itself has been cancelled.'

The Bench, therefore held that there remained no cause for continued detention of the petitioner there. In Ramniklal Kunverjibhai Gosar v. The District Magistrate, Ahmedabad and 3 ors. in Special Criminal Application No. 1270 of 1988 decided on 21/2/1989 a Division Bench of this Court (Coram : A.P. Ravani and B.S. Kapadia, JJ, as they were then) were dealing with a detention order dated 21/10/1988 u/S. 3(2) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The grounds of detention there indicated that the Director of Supplies, Gandhinagar on his way back on Amreli at about 5.30 p.m. on 17/9/1988 was at Bagodara in Dholka Taluka and at that time he saw one tanker parked at Nansidhar Automobile Petrol Pump. On his preliminary inquiry, he found that there was kerosene in the said tanker bearing registration no. GRR 5261. The said kerosene was being transmitted to the underground tank for diesel in the said petrol pump. At the time of the said inspection, the petitioner was present and he had represented that he was the power of attorney holder of the proprietor. He was attending to and looking after the entire work of purchase in the said petrol pump. The Director stopped the working of the said petrol pump. The petitioner agreed in the written statement that 3500 litres of kerosene were transmitted to the underground tanker from the tanker. It was also found that at the time of inspection the District Supply Officer had seized 16,770 litres of diesel, 1250 litres of petrol and 7500 litres of kerosene lying in the said tanker bearing Regn. No. GRR 5261. When physically inspected it was found that there were 2500 litres of diesel in addition to the stock which it would have contained and such an increase was on account of addition of kerosene therein. The statement of proprietor was

recorded on 26/9/1988. According to him he had given power of attorney to the petitioner on 15/8/1986 and by committing breach of trust, the employee had done the act of adulterating diesel by adding kerosene. Thus on considering the relevant materials the detaining authority felt satisfaction about the necessity of passing detention order against the petitioner. At the time of hearing it was found that the petitioner there was the employee though he was holding the power of attorney on behalf of the proprietor. In the background of such facts, the Bench questioned the learned Addl. Public Prosecutor what effective measures were taken to prevent the activities as displayed by the detention order. The answer was that on the date of the incident instructions were given not to operate the aforesaid petrol pump till further instructions and that at a later point of time order of operation of the said petrol pump was passed by the Collector on 22/12/1988. On account of such a subsequent event and the facts noted above, the Bench observed as under :-

'When that is so, being an employee of the said petrol pump, the petitioner who was merely a bill clerk, cannot do any such activity in future. He is dismissed from the service. In that view of the matter, it is clear that the continued detention of the petitioner is illegal and hence, he is required to be released forthwith.'

9. As stated above, the facts as reflected from the subsequent events which can be noticed from the order which has been produced hereinabove, the object/purpose in passing the aforesaid order of detention has been accomplished. Besides, the proportionate amount illegally obtained by the detenu has to a large extent been recovered although a process in accordance with law for such recovery might have seen years together. Besides, the detenu clearly appears to be on the path of correction as can be seen from his statement that he would withdraw from the aforesaid suit as also would have no objection for the Government taking possession not only of the land in question, but also the super structures. Taking of possession of the land obviously would have resulted in unduly long process. In view of such peculiar facts shaping out in this matter, the continued detention of the detenu has clearly become unnecessary and, therefore, is illegal.

10. It has been submitted on behalf of the respondents that one Mr. Manibhai Manorbhai Patel has filed a Writ Petition (Criminal) No. 171 of 1996 before



the Hon'ble Supreme Court of India against a similar detention order arising out of almost the same transaction and that release of the present detenu might prejudice the respondents' cause in the aforesaid petition. It is needless to say that the release of the present detenu on the ground that the continued detention has become illegal on account of the circumstances noted above would have nothing to do with the merits of the matter pending before the Hon'ble Supreme Court. It is next submitted on behalf of the respondents that there is no guarantee for the aforesaid suit being withdrawn by the detenu and other persons, who are trustees of the Shree Rang Education Trust. Even this apprehension would not affect the ultimate conclusion about the continued detention having become unnecessary in the facts of the case. Added to this is the willingness shown by the detenu through his learned advocate for filing of an undertaking before this Court after the detenu's release to show the bonafide about the statement made for withdrawal of the aforesaid suit pending before the City Civil Court at Ahmedabad.

11. In above view of the matter, following order is required to be passed :-

12. The continued detention of the detenu is hereby held to be illegal and the detenu if not required for any other case shall be set at liberty forthwith. The detenu, within 10 days from his release as per this order, shall file an undertaking before this Court that the aforesaid Civil Suit No. 4527 of 1995 pending in the Ahmedabad City Civil Court shall be withdrawn by him within two weeks from the date of filing of his undertaking before this Court.

Rule made absolute in the aforesaid terms.

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